

BEFORE THE SHORELINES HEARINGS BOARD  
STATE OF WASHINGTON

1 MARK HOLLAND d/b/a PUGET  
2 SOUND AQUACULTURE,

SHB NO. 86-22

3 Appellant,

4 v.

ORDER DENYING MOTION  
FOR RECONSIDERATION

5 KITSAP COUNTY,

6 Respondent,

7 and

8 YUKON HARBOR CONCERNED  
9 CITIZENS,

Intervenor-Respondent.

10 Respondent Yukon Harbor Concerned Citizens' Motion for  
11 Reconsideration of the Board's Final Order in this matter was filed  
12 with (received by) the Board on August 25, 1992.

13 WAC 461-08-220(1)(b) provides that any party may file a petition  
14 (motion) for reconsideration with the Board "within eight days of  
15 mailing of the final decision". Conformance with RCW 34.05.470(1)  
16 requires that the eight day period be extended to "ten" days.

17 The Board's FINAL ORDER in this matter was entered and mailed on  
18 August 13, 1992. The prescribed ten day period terminated on August  
19 23, 1992. Since that day was a Sunday, it is excluded in the  
20 computation of time. (WAC 461-08-250). Accordingly, the last  
21 permissible day for filing (the day of receipt in the Board's office)  
22 was Monday, August 24, 1992.

23  
24  
25 ORDER DENYING MOTION  
26 FOR RECONSIDERATION  
SHB 86-22


(1)

1 Since Respondent Yukon Harbor Concerned Citizens' Motion for  
2 Reconsideration was filed with the Board on August 25, 1992, which is  
3 not within the ten day period allowed, the Board:

4 FINDS that Yukon Harbor Concerned Citizen's Motion for  
5 Consideration was not filed in a timely manner and, accordingly,  
6 DENIES the Motion.

7 Done this 29<sup>th</sup> day of August, 1992.

8  
9 SHORELINES HEARINGS BOARD

10   
11 HAROLD S. ZIMMERMAN, Chairman  
12

13   
14 ANNETTE S. MCGEE, Member  
15

16   
17 NANCY BURNETT, Member  
18

19   
20 O'DEAN WILLIAMSON, Member  
21

22   
23 JOHN H. BUCKWALTER  
24 Administrative Law Judge  
25

26 ORDER DENYING MOTION  
27 FOR RECONSIDERATION  
SHB 86-22

BEFORE THE SHORELINES HEARINGS BOARD  
STATE OF WASHINGTON

MARK HOLLAND d/b/a PUGET  
SOUND AQUACULTURE,

Appellant,

v.

KITSAP COUNTY,

Respondent,

and

YUKON HARBOR CONCERNED  
CITIZENS,

Intervenor-Respondent.

SHB NO. 86-22

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND  
ORDER ON REMAND

PROCEDURAL BACKGROUND

On November 19, 1985, Appellant Mark Holland, d/b/a Puget Sound Aquaculture, applied to Kitsap County for a Substantial Development Permit (SDP) for the placement of ten (10) submerged salmon net-pens near the middle of Yukon Harbor, between Blake Island and the Kitsap peninsula, and approximately 3/4 of a mile from the Kitsap shore.

The Kitsap County Board of Commissioners denied the permit on April 21, 1986, and appellant appealed to the Shorelines Hearings Board.

After a de novo hearing, the Board issued its Final Findings of Fact, Conclusions of Law, and Order on July 7, 1987, reversing the Board of Commissioners and remanding the matter to Kitsap County for

1 issuance of an SDP with conditions. Mark Holland, d/b/a Puget Sound  
2 Aquaculture v. Kitsap County and Yukon Harbor Concerned Citizens, SHB  
3 86-22 (1987).

4 Petitions for Review of SHB 86-22 were filed in the Kitsap County  
5 Superior Court by Kitsap County on or about July 24, 1987, and by  
6 Yukon Harbor Concerned Citizens on or about July 28, 1987.

7 After hearing oral argument on July 25, 1989, the Court, visiting  
8 Judge Gary Velie presiding, by memorandum opinion issued March 1,  
9 1990, remanded the matter to the SHB for further evidentiary  
10 proceedings to determine two issues which will be discussed below.

11 The Order of Remand was appealed by Holland to the Court of  
12 Appeals, Division II, which, on March 6, 1991, denied review at that  
13 time. On July 26, 1991, appellant filed a Request For Hearing  
14 Pursuant to Remand with this Board.

#### 15 HEARING ON REMAND

16 The Hearing on Remand was held in the City of Port Orchard,  
17 Kitsap County, on May 18, 1992, with Board Members Annette McGee,  
18 O'Dean Williamson, and David Wolfenbarger in attendance,  
19 Administrative Law Judge John H. Buckwalter presiding. Mr. Harold  
20 Zimmerman, Board Chairman, who was unable to attend the hearing,  
21 participated in the Board's decision after reviewing the record.  
22 Proceedings were recorded by Kathy Juntala, Certified Shorthand  
23 Reporter, and were also taped. Following this hearing, by agreement  
24 of the parties and the Board, the hearing was recessed until June 10,  
25 1992, for the presentation of further evidence.

26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW AND ORDER ON REMAND (2)  
SHB NO. 86-22

1 II

2 At the hearing, none of the parties elected to present any new  
3 evidence by witnesses or exhibits relevant to the above stated issue  
4 but chose, instead, to have the issue treated as a matter of law to be  
5 decided by the Board after review of their extensive briefs.

6 However, the Court did not order a reargument and reconsideration  
7 of evidence already in the record (which would have resulted if either  
8 party had filed for reconsideration after the Board issued its first  
9 decision) but ordered "further evidentiary proceedings" for the Board  
10 to evaluate and reach a decision on the prescribed issues.

11 III

12 The parties, by failing to produce new evidence, have by  
13 implication agreed that the evidence already presented, contrary to  
14 the remand findings, was sufficient for the Board to reach  
15 conclusions. Accordingly, this Board, having reviewed the Findings of  
16 Fact and Conclusions of Law in its original decision, comes to these

17 CONCLUSIONS OF LAW - FIRST ISSUE

18 IV

19 The Board, having no new evidence to consider and having reviewed  
20 its original Findings of Fact and Conclusions of Law based on the  
21 evidence presented in its first hearing relevant to the first issue  
22 presented by the Court, reaffirms and adopts those Findings of Fact  
23 including:

1 Subsequently, at the initiation of and by agreement of the  
2 parties, the June 10, 1992 hearing was cancelled and the parties  
3 rested upon the evidence already presented at the May 18, 1992  
4 hearing. Consequently, because the Board had taken no action toward  
5 establishment of its final order pending the anticipated evidence to  
6 be produced at the June hearing, our 90 day target limit for  
7 production of a final order is set at September 10, 1992, 90 days from  
8 the anticipated June 10 hearing date.

9 At the May 18, 1992 hearing, witnesses were sworn and testified,  
10 exhibits were examined, and argument and briefs of counsel were  
11 considered. From these the Board makes these

12 FINDINGS OF FACTS-FIRST ISSUE

13 I

14 In its Order of Remand, page 4, paragraph III, Conclusions of  
15 Law, sub 1, lines 4-7, the Court found that:

16 *The decision of the Shoreline Hearings Board relating to*  
17 *the preference for aquaculture, obstruction of gillnet*  
18 *fishing, navigation impact, and safe harbor use is clearly*  
*erroneous and is not supported by substantial evidence.*  
*(emphasis added).*

19 Accordingly, the Court ordered (page 4, lines 18-22):

- 20 1 This case is remanded to the Shoreline Hearings Board  
21 for further evidentiary proceedings on the following issues:  
22 a. Whether there is a preference within the  
23 Shoreline Management Act for aquaculture as against  
unobstructed open water navigational uses (emphasis  
added),  
b. ....

Finding of Fact, page 7, par. VIII, Navigation; and,  
subparagraph 1, Tow Boats and Ocean Shipping;  
subparagraph 2, Gillnet Fishing; and  
subparagraph 3, Recreational Boating;  
and the resulting Conclusions of Law.

V

The Board further concludes, after reviewing its original decision, that nowhere did the Board indicate or imply that aquaculture should, in all cases, take preference over any or all other water dependent activities to the exclusion or significant detriment of those other uses. On the contrary, on page 13, lines 12-20, the Board very specifically indicated that its decision therein was limited to the facts of this case:

The proposed development is consistent with the preferences of the KCSMP and SMA for shorelines of state wide significance. The proposal recognizes state wide over local interest by contributing to the statewide and worldwide production of food. It largely preserves the natural character of the shoreline and would result in the long term benefit of food production with minimal environmental impact. Under these circumstances, aquaculture is a desired and preferred water-dependent use of this Puget Sound shoreline of state wide significance. (emphasis added).

## VI

This result is consistent with our findings in Cruver v. San Juan County and Webb, SHB 202 (1976) at 9:

We note that aquaculture, being water dependent, is a preferred use of the shoreline in question under RCW 90.58

...This is not to say that this Board is now giving blanket approval to all shoreline aquaculture projects. But we are saying firmly that in (a) specific instance with environmental safeguards - as we find in the instant matter -aquaculture is a desired and preferred water-dependent use of the shoreline. (emphasis added).

## VII

In summary, no other evidence having been produced as to the first issue remanded to us by the Court, we reaffirm our original opinion. We also conclude that the benefits of the food to be produced by the proposed project outweigh the minimal effects the project might have on other water uses and that the proposal is consistent with the requirements of 90.58 RCW and the Kitsap County Shoreline Management Master Plan Use Regulations for Aquaculture.

## FINDINGS OF FACT - SECOND ISSUE

## VIII

The second issue remanded to the Board by the Court for further evidentiary hearing was:

Whether the financial resources of Mark Holland d/b/a Puget Sound Aquaculture are sufficient to sustain and finance this experimental project for its initial two year period.

## IX

Both sides were prepared to discuss Holland's financial obligations and resources for the initial five (5) year period of operations. The Board, pursuant to the Court's Order, limited evidence and discussion to the first two years only.



X

Holland, after consulting with multiple suppliers, estimates his first year expenses to be (exhibit A 21):

Capital Expenses

<u>Item(s)</u>	<u>Cost</u>
1 Netpen	\$ 6,700
1 Workboat	\$15,000
1 Feed pump system	\$ 800
1 Waste pump system	\$ 1,300
1 Air Compressor & Volume Tank	\$ 1,200
1 Powerplant (10 H.P. Diesel)	\$ 3,000
Test Instruments	\$ 2,000
4 Buoys	\$ 1,200
Diving Gear	\$ 1,500
4 Dip nets	\$ 200
Tools	\$ 1,000

-----  
Total Capital Expenses \$33,900

Operating Expenses

Salmon Eggs	
(20,000 @ \$.08/each)	\$ 1,600
Fuel	\$ 200
Office (in residence)	\$ 200
Testing	\$ 300
Performance Bond	\$ 5,000

-----  
Total Operating Expenses --- \$ 7,300

(No labor expenses are included above because Holland will be doing the necessary work himself; no interest payments are included because Holland will not have to borrow money the first year.)

First year total expenses----\$41,200 to which Holland added 15% (\$6,180) as a contingency reserve to cover unknown or unforeseen expenses for a grand total of \$47,380.

XI

The purpose of the purchase of 20,000 salmon eggs was to produce smolt for introduction to net pens in the second year. However,

1 testimony established that, since it is now possible to purchase smolt  
2 in varying quantities and sizes, such a purchase of smolt in the  
3 second year would make the purchase of the salmon eggs in the first  
4 year unnecessary. This would result in a reduction in first year  
5 expenses by \$1,600 resulting in a total expenditure of \$39,600 plus a  
6 15% contingency reserve of \$5940 for a grand total of \$45,540, \$1,840  
7 less than his original projection.

8 XII

9 The first year of operations will be spent in building, testing,  
10 and setting up the operation of the project. No profits will be  
11 realized during that first year.

12 XIII

13 Holland testified that he would be able to sustain his first year  
14 expenses without borrowing money. He also testified that, while he  
15 does not know his total monetary worth at this time, his resources  
16 include:

17 \$42,000 per year salary from his job as an engineer with the  
18 Boeing Company in which he will continue during the first two years of  
19 operation of the project. This salary income will be used to support  
20 himself and his family, and none of it will be used for the project.

21 One bank account of an amount somewhere between \$10,000 and  
22 \$20,000.

1 Property in Kitsap County assessed at \$80,000 which he purchased  
2 for \$45,500 plus closing costs and for which he owes his father  
3 approximately \$48,000 (the only debt he now owes) leaving him a  
4 possible net worth of \$32,000 in the \$80,000 property.

5 Debentures totaling approximately \$24,000.

6 Mutual funds with Boeing worth \$50,000, which would be collateral  
7 for loans he may incur relative to the project.

8 Holland at present lives in Burien but does not own his residence.

9 XIV

10 Summing up the possible sources of funds from the above, without  
11 considering his Boeing income, Holland's total resources available to  
12 support the project in the first year of operation without borrowing  
13 money are:

14	Bank account	\$10,000 (minimum).
15	Kitsap property	\$32,000
16	Debentures	\$24,000
17	Mutual funds	\$50,000
18	Total	<u>\$116,000</u>

19 XV

20 Holland testified that his second year expenses would be:

21 Capital Expenses:

22 3 Netpens \$20,100 (Total Cap. Expenses)

23 Operating Expenses

24	Salmon eggs	\$ 1,600
25	Fuel	\$ 3,000
26	Office	\$ 300
27	Testing	\$ 500
	Liability, Property, Fish	

Mortality Insurance	\$ 1,500
Smolts	\$20,000
Smolt Transport and Transfer	\$ 1,500
Feed (15,000 lbs. @\$.40/lb.)	\$ 6,000
Medication	\$ 800
Maintenance	\$ 500
Salaries	\$ 5,000
	-----
Total Operating Expenses ---	\$ 40,700
Second year total expenses --	\$60,800 plus a 15%
contingency reserve of \$9,120 for a <u>grand</u>	
<u>total of \$69,920</u>	

#### XVI

The above figures, as in the first year, could be reduced by the direct purchase of smolts (already included above) and the elimination of the purchase of eggs (\$1,600) resulting in total expenses of \$59,200 with a 15% contingency reserve of \$8,880 for a grand total of \$68,080, a reduction of \$1,840.

#### XVII

Holland testified that it will be necessary for him to obtain money from other sources to maintain the second year operation. The source possibilities include:

Money from his father or other private investors, either as a loan or as capital investment to be repaid from future profits.

Bank loans which would be repaid with interest over the second and subsequent years.

1 A bank equity loan based on a percentage of his equity in a  
2 home which he may build with his salary money from Boeing,  
3 such a loan being at a lower rate of interest than a  
4 such as noted above.

5 Holland testified that his main source for obtaining necessary  
6 supplementary funds would be money from his father, by loan, as  
7 capital investment repayable from future profits, or as collateral for  
8 a bank loan.

9 XVIII

10 Combining first and second year expenses (\$45,540 plus \$68,080),  
11 the total for the two years is \$113,620. His monetary resources are  
12 \$116,000.

13 XIX

14 Through the testimony of Mr. Robert Beckham, a CPA, respondents  
15 questioned the completeness of Holland's schedule of first and second  
16 year costs and alleged that they should have included:

17 \$20,000 for the cost of smolt in the first year. We do not  
18 find this to be a legitimate addition because, as discussed  
19 above, smolt would not have to be purchased until the  
20 second year.

21 Unspecified additional money for salaries in both years. Holland  
22 testified that he will do all the labor the first year and  
23 that labor hours in the second year would be minimal and  
24 would be paid on an hourly basis for which the scheduled  
25 \$5,000 should be adequate.

Capital gains tax on the sale of a house in 1991. This would not be a legitimate addition to the cost of doing business but could be an additional liability affecting his resources the first year. However, no testimony was produced either as to the amount of tax owed, if any, or that it could not be met through Holland's Boeing salary.

XX

Through exhibit R-42 which was prepared by Mr. Beckham, respondents introduced further factors which, allegedly, would have seriously impeached Mr. Holland's estimate of costs. The exhibit was based on five (5) assumptions which we will discuss individually:

1. Assumption: Allowance of 15% for anticipated but unknown expenses is sufficient to cover all unlisted expenses except interest.

Discussion: This constitutes an admission that the 15% contingency reserve is adequate since the "interest" assumption is not valid. (see 2. below).

2. Assumption: All capital outlays for the first three (sic) years come from borrowed funds and the cost of borrowing is 12%.

Discussion: Holland testified that there would be no borrowing for the project during the first year and that for the second year necessary monies could be obtained as

1 capital investments from private investors to be repaid out  
2 of future profits.

3 We do not find the inclusion of interest payments  
4 a valid assumption.

- 5 3. Assumption: Mr. Holland can earn \$40,000 (sic) per year at  
6 his present job. He works at that job for the first  
7 one-half year and then quits his present job to devote full  
8 time to the netpen project.

9 Discussion: There was no evidence to rebut Holland's  
10 testimony that he will continue to work at his Boeing job  
11 at \$42,000 per year during the first two years of the  
12 project.

13 We do not find the assumption valid.

- 14 4. Assumption: Mr. Holland has no other source of personal  
15 income. After quitting his job to devote full time to the  
16 salmon operation, he must borrow funds to live on; cost of  
17 borrowing is 12%.

18 Discussion: The validity of this assumption as to the  
19 first two years is negated by his testimony that he will  
20 continue to work the first two years. (number 3. above).

- 21 5. The fifth assumption is directed to income at the end of  
22 the third year of operation and is, therefore, not relevant  
23 to the two year remand issue.

XXI

Any Conclusion of Law which is deemed a Finding of Fact is hereby adopted as such. From these Findings of Fact, the Board comes to these

CONCLUSIONS OF LAW - SECOND ISSUE

A. Jurisdiction of the Shorelines Hearings Board

XXII

The jurisdiction of the Shorelines Hearings Board is defined by statute:

RCW 90.58.180(1):

Any person aggrieved by the granting, denying, or rescinding of a permit on shorelines of the state pursuant to RCW 90.58.140 may seek review from the shorelines hearings board...(emphasis added); and,

RCW 90.58.140(2):

A permit shall be granted:

(a).....

(b)...only when the development proposed is consistent with the applicable master program and the provisions of chapter 90.58 RCW.

XXIII

Accordingly, we review this proposed development under those criteria which are defined in 90.58 RCW and in the Kitsap County Shoreline Management Master Program (KCSMMP). Nowhere in those two documents do we find financial responsibility of the applicant defined or even implied as a criterion for issuance or denial of a shorelines permit.

XXIV

We conclude that the Shorelines Hearings Board does not have statutory subject matter jurisdiction to consider the second (financial capability) issue remanded to us.



B. New Issues in the Superior Court

XXV

Chapter 461-08 WAC governs the hearings practices and procedures of the Shorelines Hearings Board. More specifically, WAC 461-08-120 requires that a prehearing conference "shall be held in every case...(unless otherwise ordered by the chairman)", and WAC 461-08-140 provides that:

*(The resulting prehearing order) shall include the agreements of the parties concerning issues (and that the prehearing order) shall control the subsequent course of the proceedings unless modified for good cause by subsequent order.*

Consequently, at the subsequent formal hearing, the parties are limited to those issues only which are stated in the Board's prehearing order or subsequent modification thereof.

XXVI

A review of the record shows that a prehearing conference was held in this matter on August 12, 1986, that a Pre-Hearing Order was issued by the Board on September 18, 1986, that nowhere under paragraph II, ISSUES, (misnumbered I), of that document are Holland's financial resources raised as an issue, that paragraph X of that document states specifically that "The above statement of issues (Part II) shall control the subsequent course of these proceedings unless modified for good cause by subsequent order of this Board", and that no such subsequent modifying order was ever issued.

1 XXVII

2 The issue of Holland's financial resources was not one of the  
3 issues defined by our prehearing order and was and is, therefore,  
4 precluded from consideration at our formal hearings. Our 1987  
5 decision, SHB No. 86-22, reflects that limitation; nowhere is there a  
6 discussion of financial responsibility under either the Findings of  
7 Fact, the Conclusions of Law, nor the Order. Holland's financial  
8 resources were not an issue in the Board's formal hearing in this  
9 matter in December of 1986.

10 XXVIII

11 While our 1987 decision does discuss Practicality in paragraph IX  
12 (somehow translated to "feasibility" in the Remand Order)  
13 "practicality" refers to "something that appears to be capable of  
14 being put into effect" (Webster's New World Dictionary, 1972, where  
15 there is no reference to or consideration of financial capability).  
16 From the Board's language, "The proposal has the potential for success  
17 if operated carefully", it is obvious that the Board was referring to  
18 the operational aspects of the project, not the financial aspects.

19 XXIX

20 It is an established rule in Washington courts that:

21 An issue not raised in a contested (administrative) case  
22 proceeding may not be raised for the first time upon superior  
23 court review of the record. Kitsap County v. Natural Resources,  
24 99 Wn.2d 386 (1983) (numerous cites omitted).

1 XXX

2 However, there is an exception to the above rule. The raising of  
3 the jurisdictional questions of sub-sections A and B above at this  
4 time in administrative review proceedings is supported by In Re  
5 Saltis, 94 Wn.2d 889 (1980) at 893:

6 *The question of superior court subject matter*  
7 *jurisdiction may be raised at any time.*

8 Furthermore, WAC 461-08-075 provides that, as in this matter,

9 *...the board may sua sponte raise the jurisdictional*  
10 *issue.*

11 XXXI

12 Because the issue of Holland's financial resources was not raised  
13 either at the Board's prehearing conference nor heard or considered at  
14 the formal hearings, we conclude that the issue was improperly raised  
15 by respondents in the Superior Court review and should be precluded  
16 from the Court's consideration on jurisdictional grounds.

17 C. Holland's Financial Resources

18 XXXII

19 If, however, the Board's jurisdiction did extend to Holland's  
20 financial resources, we would conclude that he has met his burden of  
21 proof in demonstrating his financial capability to maintain his  
22 proposed project for the first two years of operation.

23 Respondent's own testimony (XX,1 above) confirms Holland's  
24  
25  
26

1 financial capability for the first year and removes that as an issue.  
2 Furthermore, we note from our Findings of Fact that his anticipated  
3 expenses (\$45,540) are more than met by his financial resources  
4 (\$116,000). We conclude that his financial resources are adequate to  
5 cover his first year operation.

6 XXXIII

7 Holland testified that outside financial help would be necessary  
8 for the second year of operation, and it is here that the Board must  
9 balance, not facts, but suppositions. We are put into the position of  
10 trying to predict the economic fate of a private business much as  
11 expert economists (so often unsuccessfully) try to predict the  
12 economic future of the nation.

13 XXXIV

14 Holland, for instance, assumes that his 15% contingency reserve  
15 will be adequate to meet unexpected expenses. Respondent County, in  
16 its Hearing Brief on Remand at page 17, argues that Appellant  
17 "blithely" asserts that his 15% fund is adequate and then the County  
18 proceeds just as "blithely" to name a number of events which could, if  
19 they happened, result in the fund being inadequate. These are not  
20 facts. They are suppositions which carry no more weight than would an  
21 assumption that Holland might, during the two years, inherit or win a  
22 substantial sum which would make this an academic issue.

1 XXXV

2 We recite the above only to point out the difficulties of making  
3 judgements where, as in this case, a project is subject to the  
4 favorable or unfavorable vagaries and vicissitudes of the business  
5 world. We cannot know whether any bank will or will not give Holland  
6 a loan if he applies for one in the second year. Nor can we know  
7 whether Holland's father will or will not be able to assist his son  
8 financially in the future as, according to Holland's testimony, he is  
9 now.

10 We can only balance the evidentiary facts as they now stand in  
11 weighing the suppositions of the parties as to the future, and we  
12 conclude, that in the absence of persuasive rebuttal testimony from  
13 respondents, Holland has met his burden of proof and that he has the  
14 financial resources, as it appears now, to meet the costs of the first  
15 two years of operation.

16 XXXVI

17 We note that the KCSMMP, Part 8 - Appendicies, section IV,  
18 Duration of Permits, provides that "Construction or substantial  
19 progress toward construction of a project for which a permit has been  
20 granted ... must be undertaken within two years after the approval of  
21 the ... permit". If Holland, because of financial considerations, is  
22 unable to perform substantially within the two year period, the County  
23 could then take appropriate action.

The Board also notes that this two year requirement is a post permit control which cannot, as in this case, be translated into a pre permit requirement.

XXXVII

We also note that, if Holland's project fails during the first two years of operation because of financial difficulties or for any other reason, only he (and possibly his creditors) will be harmed. There will be no damage to the environment when and if his project is dismantled properly, and the respondents, rather than being harmed, will have achieved by attrition what this Board concludes they should not achieve by the legal process of permit denial at this time.

XXXVIII

In summary, we conclude that this Board does not have jurisdiction to decide the second (financial resources) issue remanded to us, that the Court does not have jurisdiction to decide the financial resource issue since it was not an issue at the Board's hearing, and that, if the Board did have jurisdiction to make such a decision, Holland has the financial resources to sustain the first two years of operation of his proposed project.

XXXXIX

Any Finding of Fact which is deemed a Conclusion of Law is hereby adopted as such. From these Conclusions of Law the Board enters this

ORDER

The Board's ORDER of SHB No. 86-22, dated July 7, 1987, is affirmed, adopted, and restated herein by reference in its entirety.

DONE this 13<sup>th</sup> day of August, 1992.

SHORELINES HEARINGS BOARD

Harold S. Zimmerman  
HAROLD S. ZIMMERMAN, Chairman

Annette S. McGee  
ANNETTE S. MCGEE, Member

Dave Wolfenbarger  
DAVE WOLFENBARGER, Member

O'Dean Williamson  
O'DEAN WILLIAMSON, Member

John H. Buckwalter  
JOHN H. BUCKWALTER  
Administrative Law Judge

0057j

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER ON REMAND (22)  
SHB NO. 86-22

Lib

BEFORE THE SHORELINES HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF a )  
Shorelines Substantial Development )  
Permit denied by Kitsap County to )  
Mark Holland, )  
MARK HOLLAND, d/b/a PUGET )  
SOUND AQUACULTURE )  
Appellant, )  
v. )  
KITSAP COUNTY, )  
Respondent, )  
and )  
YUKON HARBOR CONCERNED CITIZENS, )  
Intervenor - Respondent.)

SHB No. 86-22

FINAL FINDINGS OF FACT  
CONCLUSIONS OF LAW AND  
ORDER

THIS MATTER, the request for review of a denial of a shoreline permit for development of a salmon net pen proposal, came on for hearing before the Shoreline Hearings Board, Lawrence J. Faulk, Chairman and Wick Dufford, Judith A. Bendor, Nancy Burnett, Les Eldridge and Rod M. Kerslake, Members, convened at Port Orchard and Lacey, Washington on December 10, 11, and 12, 1986, and February 3, and 4, 1987. Administrative Appeals Judge William A. Harrison presided.



1 Appellant was represented by his attorneys, David A. Bateman and  
2 John E. Woodring. Respondent Kitsap County was represented by Deputy  
3 Prosecuting Attorney Scott M. Missall. Yukon Harbor Concerned  
4 Citizens were represented by their attorney, William M. Crawford.  
5 Reporter Gene Barker provided reporting services.

6 Witnesses were sworn and testified. Exhibits were examined. From  
7 testimony heard and exhibits examined, the Shorelines Hearings Board  
8 makes these

9 FINDINGS OF FACT

10 I.

11 This matter arises in Kitsap County within Yukon Harbor and  
12 concerns a proposal for rearing Atlantic salmon in net pens. Yukon  
13 Harbor is on the mainland shore of Kitsap County in the vicinity of  
Blake Island.

15 II.

16 On November 19, 1985, appellant, Mark Holland, applied to Kitsap  
17 County for a shoreline substantial development permit. The proposed  
18 development consists of 10 salmon net pens to be anchored in 50 feet  
19 of water (MLLW), some 3/4 of a mile from shore. The pens are designed  
20 to be kept at least 30 feet below the surface of the water, except  
21 when raised for grading or harvesting the salmon. This feature of  
22 rearing salmon in submerged pens distinguishes the proposal from the  
23 bulk of established practice in which the pens remain at the surface.

24  
25  
26 SHB No. 86-22

FINAL FINDINGS OF FACT

27 CONCLUSIONS OF LAW AND ORDER

(2)

1 Mr. Holland is an experienced underwater diver who proposes to  
2 personally tend the salmon. Feeding would be done underwater by  
3 pumping the feed through a hand held hose. A system of 31 anchors,  
4 each weighing 1000 lbs, would secure the net pens. The buoyancy of  
5 the pens together with lines and pulleys would allow the pens to be  
6 raised for harvesting. Although the salmon would be slaughtered in a  
7 boat at the pen-site, both the fish flesh and waste would be  
8 transported in the boat to fish processing facilities in King County.  
9 Mr. Holland now resides in King County and proposes to commute by boat  
10 from Seattle to the pen site. It is anticipated that in 2 years the  
11 pens would reach maximum production of 80,000 pounds of salmon per  
12 year. At that point Mr. Holland intends to move to Port Orchard in  
13 Kitsap County and continue the operations from there.

### III.

15 On January 8, 1986, Kitsap County, as lead agency, issued a  
16 Determination of Non-Significance (DNS) for the proposal under the  
17 State Environmental Policy Act (SEPA), chapter 43.21C RCW. Copies of  
18 the DNS were sent to the Washington State Department of Ecology and  
19 Department of Fisheries, among others. The DNS was neither withdrawn  
20 by Kitsap County as lead agency nor did any other agency assume lead  
21 agency status to contravene the DNS.

22  
23  
24  
25  
26 SHB No. 86-22

FINAL FINDINGS OF FACT

27 CONCLUSIONS OF LAW AND ORDER

(3)

1 VI.

2 On March 7, 1986, the Department of Fisheries granted a Hydraulic  
3 Project Approval to appellant to undertake the proposed net pen  
4 project. The sea bed beneath the site was surveyed. It did not  
5 contain significant amounts of eelgrass or geoducks in commercially  
6 harvestable numbers.

7 V.

8 On April 21, 1986, the Kitsap County Board of County Commissioners  
9 denied the appellant's shoreline permit application. Appellant  
10 appeals from this denial. His request for review was filed here on  
11 May 22, 1986.

12 VI.

13 The evidence before us can be classified into four major subject  
14 headings. These are: The proposed development's 1) biological  
15 effect, 2) effect on navigation, 3) practicality and 4) aesthetic  
16 effect. We now turn our consideration to each of these.

17 VII.

18 Biological Effect. There are five general areas of biological  
19 concern that arise from the proposal:

20 1. Water Quality. The proposed development would produce waste  
21 consisting of fish feces and unconsumed feed. Since the appellant  
22 proposes to use dry feed, which minimizes food waste, approximately  
23  
24  
25

1 56,000 pounds of total waste will be produced yearly. This would form  
2 a sediment beneath the nets and result in the release of nutrients and  
3 consumption of dissolved oxygen. The concentrations of nutrients and  
4 biological oxygen demand (BOD) in mariculture are very dilute.  
5 Dilution is aided in this case by a mean water velocity of .21 knots  
6 which tends to counter the effect of nutrient and BOD loading through  
7 flushing. No discharge of heavy metals will occur. Degradation of  
8 water quality beyond the culture structure is unlikely. Because the  
9 pens are only 5 feet off the bottom when submerged, concern was  
10 expressed during the circulation of the DNS and in the hearing before  
11 us that wastes will unacceptably accumulate. The appellant responded  
12 by agreeing to collect sediment in tarps suspended below the nets and  
13 by agreeing to pump it periodically into deeper water. Moreover,  
appellant is also willing to monitor water quality adjacent to the  
15 proposed pens.

16 2. Antibiotics. To combat bacteria the antibiotic tetracycline,  
17 or oxytetracycline, would be mixed with the fish feed. This is highly  
18 water soluble and breaks down in 10-20 days. Antibiotics would be  
19 used to treat fish disease, and not to prevent the outbreak of  
20 disease. The possible entry of this antibiotic into the environmental  
21 food chain from this proposal is not likely to have any adverse effect  
22 upon human health. However, more data on the possible future effects  
23 of antibiotics in the aquatic environment is merited. See Weston,  
24 supra, at pp. 97-99 and 128-129.

1 3. Disease. Disease in pen reared salmon is not likely to be  
2 transmitted to wild populations of fish. The bacterial diseases of  
3 salmon are not transmissible to humans. The introduction of the  
4 proposed development is not likely to increase the pre-existing threat  
5 of disease.

6 4. Escapement. The proposed development involves Atlantic salmon  
7 which, in the event of escape from the pens, cannot interbreed with  
8 Pacific salmon as the Atlantics are a different genus and species.  
9 Attempts to purposely establish Atlantic salmon populations in the  
10 northwest have resulted in failure. It is therefore unlikely that  
11 escaped Atlantic salmon would become established or cause a  
12 significant competitive threat to native salmon or steelhead.

13 5. Estuary. Respondents urge that concerns about water quality,  
14 antibiotics, disease and escapement are amplified due to the  
15 proposal's location in the estuary of Curley Creek. However, the  
16 proposal is not within that estuary. Coastal Zone Atlas of  
17 Washington, Volume 10 p. KS17F (Department of Ecology, 1979).  
18 Moreover, the proposed development is not likely to have any adverse  
19 effect upon the estuary.

20 In summary, the proposed development is not likely to have any  
21 significant, adverse, biological effect upon the environment.  
22  
23  
24  
25

VIII.

Navigation. The effect of the proposed development upon navigation must be viewed with an understanding of the nature of the proposal and the extent of surrounding waters. As to surrounding waters, Yukon Harbor comprises some 3,500 acres. The nature of the proposal is such that the pens, when at the surface, would occupy 1/2 acre of the Harbor. Yet, most often, the pens will be submerged. The only surface manifestation of the proposal would then be the four permanent marker buoys (one on each corner of the site) bearing Coast Guard approved lighting. There are three traditional types of navigation in Yukon Harbor which have been addressed by the parties:

1. Tow Boats and Ocean Shipping. Respondents point out that Yukon Harbor is used by tow boats pulling barges, that the Harbor is a temporary anchorage for ocean shipping waiting to enter Elliott Bay and that the Harbor is a refuge to all shipping during storms. Assuming, however, that the Coast Guard approved lights of the proposal did not prevent these vessels from entering the unattended pen site, the gravest incident which is likely to occur would be that the vessel would bump into one or more of the four rubber light buoys. These buoys would be anchored independently of the pens so that even pulling one loose would not dislodge the pens. No damage to the vessel would be likely.

2. Gillnet Fishing. Gillnet fishing with its deep running nets would potentially foul on the submerged pens. The well marked location of the pen site should provide adequate warning within an area the size of Yukon Harbor. Gillnet fishing has taken place about nine times in the past year, within Yukon Harbor, by the non-treaty fishing fleet. This corresponded to the nine days of opportunity allowed by regulations. The Suquamish Tribe indicated in correspondence to Kitsap County that their fishing fleet does not presently use the site for gillnetting.

3. Recreational Boating. The proposed development poses no substantial interference with recreational boating. It would also provide reasonable navigation access to water front property, including Blake Island as well as the mainland shore.

In summary, the proposed development would not significantly hamper traditional navigation within Yukon Harbor.

## IX.

Practicality. The proposed, year-around, submerged salmon net pens are a new concept. The project presents logistical challenges to the operator, Mr. Holland. An established market exists for the sale of salmon like those which the proposal would produce. The proposal has the potential for success if operated carefully. Moreover, it could easily be dismantled and its impacts, in effect, erased from the environment if not successful.

X.

Aesthetics. The visual presence of the proposed development would be unobtrusive when viewed from shore. During periods when the pens are at the surface, a 30 foot work boat would tend the pens and add little to the view from shore 3/4 of a mile away. When the pens are submerged the proposal would be out of sight altogether excepting at night when the four navigation lights would be visible. Those lights would not result in material harm to the view from shore. The proposal involves no significant noise. There would be no significant, adverse, aesthetic effect from the proposal.

XI.

The Kitsap County Shoreline Management Master Program (KCSMP) includes "Use Activity Regulations" which are directly supportive of the adopted policies for each environment and use activity. KCSMP p.7-2. Among these are Use Activity Regulations for Aquaculture. KCSMP pp. 7-5 and 7-6. These are set forth as follows:

II. AQUACULTURE

DEFINITION: Aquaculture (popularly known as fish farming) is the culture or farming of food fish, shell fish, or other aquatic plants and animals for commercial and recreational purposes.

POLICY: Aquaculture should be encouraged in Kitsap County and so located to be compatible with navigation and upland use.



1 REGULATIONS:

2 A. Environments:

- 3 1. Aquaculture is permitted in the Urban, Semi-Rural,  
4 Rural and Conservancy Environments. Aquaculture  
5 shall be permitted in the Natural Environment  
6 subject to obtaining a Shorelines conditional Use  
Permit, except no facilities associated with  
aquaculture shall be allowed on the land in a  
Natural Environment.

7 B. General Regulations

- 8 1. Aquacultural activities shall be located so as to  
9 provide reasonable navigations access to waterfrom  
property owners.
- 10 2. Aquacultural structures shall be placed, when  
11 practicable, so as to minimize interference with  
surface navigation.
- 12 3. Aquacultural development shall be designed and  
13 constructed to harmonize insofar as possible with  
the local environment, and shall be maintained in  
a neat and orderly manner.
- 14 4. Aquacultural development shall make reasonable  
15 provisions to control nuisance factors such as  
noise or odor.
- 16 5. Aquacultural wastes shall be disposed of in a  
17 manner that will prevent degradation of associated  
18 upland, inland, away from the shoreline proper,  
when practicable.
- 19 6. Structures or activities associated with  
20 aquaculture that are not shoreline dependent shall  
be located inland, away from the shoreline proper.
- 21 7. Equipment, structures and material shall not be  
22 abandoned in the shoreline or wetland area.
- 23
- 24

- 1 8. Aquaculture facilities or structures which are  
2 hazards to navigation shall be suitably marked for  
3 day and night visibility.
- 4 9. Special precautionary measures shall be taken to  
5 minimize the risk of oil or other toxic materials  
6 from entering the water or shoreline area.
- 7 10. Mechanical and/or hydraulic clam harvesting  
8 operations, which use a hydraulic harvester or  
9 similar floating equipment, shall be required to  
10 obtain a Substantial Development Permit. Such a  
11 permit shall only be issued if the applicant can  
12 show that the proposed operation will not harm  
13 fish or shellfish resources, other than those  
14 being harvested; will not lead to increase in  
15 turbidity of siltation of surrounding property;  
16 will be conducted so as to immediately fill back  
17 any trenches it digs up to a depth not to exceed  
18 three inches; and noise of the proposed operation  
19 does not unduly disturb the residents of nearby  
20 areas.

## 21 XII.

22 Among the policies of the KCSMP are "Natural Systems Policies"  
23 within which no. 9, on p. 5-2, requires consideration of the natural  
24 systems regulation of the Department of Ecology. Respondent's cite  
25 WAC 173-16-050 (5) of those regulations which calls for close scrutiny  
26 for all plans for development in estuaries. The KCSMP also contains  
27 principles and development guidelines for shorelines of state wide  
28 significance. The proposed development would be in the semi-rural  
29 environment within a shoreline of statewide significance. KCSMP  
30 Shoreline Environmental Designation Map (Appendix III) and paragraph 7  
31 of p. 6-3.

XIII.

Any conclusion of Law which is deemed a Finding of Fact is hereby adopted as such. From these Findings of Fact, the Board, comes to these

CONCLUSIONS OF LAW

I.

The issues in this matter concern the consistency of the proposed development with the Kitsap County Shoreline Master Program (KCSMP) and the Shoreline Management Act (SMA), chapter 90.58 RCW.

II.

The proposed development is "aquaculture" as defined in the KCSMP at p. 7-5 (See Finding of Fact XI, above). The proposed development is not "commercial" as defined in the KCSMP at p. 7-10. We hold, thereby, that the specific definition takes precedence over the general. In further support of our conclusion we note that "aquaculture" as presently defined in the 1977 version of the KCSMP does not require a conditional use permit; whereas, in the prior, 1976, version of the KCSMP it did. See Department of Natural Resources and Francklyn v. Kitsap County SHB No. 78-37 (1980). It would therefore be contrary to the apparent intent of these amendments to deem aquacultural projects "commercial" as the latter still requires a conditional use permit. KCSMP, Shoreline Environmental Compatibility Chart, p. 7-3. Review under the aquaculture portion of the KCSMP is therefore appropriate.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50  
51  
52  
53  
54  
55  
56  
57  
58  
59  
60  
61  
62  
63  
64  
65  
66  
67  
68  
69  
70  
71  
72  
73  
74  
75  
76  
77  
78  
79  
80  
81  
82  
83  
84  
85  
86  
87  
88  
89  
90  
91  
92  
93  
94  
95  
96  
97  
98  
99  
100  
101  
102  
103  
104  
105  
106  
107  
108  
109  
110  
111  
112  
113  
114  
115  
116  
117  
118  
119  
120  
121  
122  
123  
124  
125  
126  
127  
128  
129  
130  
131  
132  
133  
134  
135  
136  
137  
138  
139  
140  
141  
142  
143  
144  
145  
146  
147  
148  
149  
150  
151  
152  
153  
154  
155  
156  
157  
158  
159  
160  
161  
162  
163  
164  
165  
166  
167  
168  
169  
170  
171  
172  
173  
174  
175  
176  
177  
178  
179  
180  
181  
182  
183  
184  
185  
186  
187  
188  
189  
190  
191  
192  
193  
194  
195  
196  
197  
198  
199  
200  
201  
202  
203  
204  
205  
206  
207  
208  
209  
210  
211  
212  
213  
214  
215  
216  
217  
218  
219  
220  
221  
222  
223  
224  
225  
226  
227  
228  
229  
230  
231  
232  
233  
234  
235  
236  
237  
238  
239  
240  
241  
242  
243  
244  
245  
246  
247  
248  
249  
250  
251  
252  
253  
254  
255  
256  
257  
258  
259  
260  
261  
262  
263  
264  
265  
266  
267  
268  
269  
270  
271  
272  
273  
274  
275  
276  
277  
278  
279  
280  
281  
282  
283  
284  
285  
286  
287  
288  
289  
290  
291  
292  
293  
294  
295  
296  
297  
298  
299  
300  
301  
302  
303  
304  
305  
306  
307  
308  
309  
310  
311  
312  
313  
314  
315  
316  
317  
318  
319  
320  
321  
322  
323  
324  
325  
326  
327  
328  
329  
330  
331  
332  
333  
334  
335  
336  
337  
338  
339  
340  
341  
342  
343  
344  
345  
346  
347  
348  
349  
350  
351  
352  
353  
354  
355  
356  
357  
358  
359  
360  
361  
362  
363  
364  
365  
366  
367  
368  
369  
370  
371  
372  
373  
374  
375  
376  
377  
378  
379  
380  
381  
382  
383  
384  
385  
386  
387  
388  
389  
390  
391  
392  
393  
394  
395  
396  
397  
398  
399  
400  
401  
402  
403  
404  
405  
406  
407  
408  
409  
410  
411  
412  
413  
414  
415  
416  
417  
418  
419  
420  
421  
422  
423  
424  
425  
426  
427  
428  
429  
430  
431  
432  
433  
434  
435  
436  
437  
438  
439  
440  
441  
442  
443  
444  
445  
446  
447  
448  
449  
450  
451  
452  
453  
454  
455  
456  
457  
458  
459  
460  
461  
462  
463  
464  
465  
466  
467  
468  
469  
470  
471  
472  
473  
474  
475  
476  
477  
478  
479  
480  
481  
482  
483  
484  
485  
486  
487  
488  
489  
490  
491  
492  
493  
494  
495  
496  
497  
498  
499  
500  
501  
502  
503  
504  
505  
506  
507  
508  
509  
510  
511  
512  
513  
514  
515  
516  
517  
518  
519  
520  
521  
522  
523  
524  
525  
526  
527  
528  
529  
530  
531  
532  
533  
534  
535  
536  
537  
538  
539  
540  
541  
542  
543  
544  
545  
546  
547  
548  
549  
550  
551  
552  
553  
554  
555  
556  
557  
558  
559  
560  
561  
562  
563  
564  
565  
566  
567  
568  
569  
570  
571  
572  
573  
574  
575  
576  
577  
578  
579  
580  
581  
582  
583  
584  
585  
586  
587  
588  
589  
590  
591  
592  
593  
594  
595  
596  
597  
598  
599  
600  
601  
602  
603  
604  
605  
606  
607  
608  
609  
610  
611  
612  
613  
614  
615  
616  
617  
618  
619  
620  
621  
622  
623  
624  
625  
626  
627  
628  
629  
630  
631  
632  
633  
634  
635  
636  
637  
638  
639  
640  
641  
642  
643  
644  
645  
646  
647  
648  
649  
650  
651  
652  
653  
654  
655  
656  
657  
658  
659  
660  
661  
662  
663  
664  
665  
666  
667  
668  
669  
670  
671  
672  
673  
674  
675  
676  
677  
678  
679  
680  
681  
682  
683  
684  
685  
686  
687  
688  
689  
690  
691  
692  
693  
694  
695  
696  
697  
698  
699  
700  
701  
702  
703  
704  
705  
706  
707  
708  
709  
710  
711  
712  
713  
714  
715  
716  
717  
718  
719  
720  
721  
722  
723  
724  
725  
726  
727  
728  
729  
730  
731  
732  
733  
734  
735  
736  
737  
738  
739  
740  
741  
742  
743  
744  
745  
746  
747  
748  
749  
750  
751  
752  
753  
754  
755  
756  
757  
758  
759  
760  
761  
762  
763  
764  
765  
766  
767  
768  
769  
770  
771  
772  
773  
774  
775  
776  
777  
778  
779  
780  
781  
782  
783  
784  
785  
786  
787  
788  
789  
790  
791  
792  
793  
794  
795  
796  
797  
798  
799  
800  
801  
802  
803  
804  
805  
806  
807  
808  
809  
810  
811  
812  
813  
814  
815  
816  
817  
818  
819  
820  
821  
822  
823  
824  
825  
826  
827  
828  
829  
830  
831  
832  
833  
834  
835  
836  
837  
838  
839  
840  
841  
842  
843  
844  
845  
846  
847  
848  
849  
850  
851  
852  
853  
854  
855  
856  
857  
858  
859  
860  
861  
862  
863  
864  
865  
866  
867  
868  
869  
870  
871  
872  
873  
874  
875  
876  
877  
878  
879  
880  
881  
882  
883  
884  
885  
886  
887  
888  
889  
890  
891  
892  
893  
894  
895  
896  
897  
898  
899  
900  
901  
902  
903  
904  
905  
906  
907  
908  
909  
910  
911  
912  
913  
914  
915  
916  
917  
918  
919  
920  
921  
922  
923  
924  
925  
926  
927  
928  
929  
930  
931  
932  
933  
934  
935  
936  
937  
938  
939  
940  
941  
942  
943  
944  
945  
946  
947  
948  
949  
950  
951  
952  
953  
954  
955  
956  
957  
958  
959  
960  
961  
962  
963  
964  
965  
966  
967  
968  
969  
970  
971  
972  
973  
974  
975  
976  
977  
978  
979  
980  
981  
982  
983  
984  
985  
986  
987  
988  
989  
990  
991  
992  
993  
994  
995  
996  
997  
998  
999  
1000

III.  
The proposed development is consistent with the aquaculture policy of the KCSMP at pp. 7-5. (See Finding of Fact XI, above). It is so located as to be compatible with navigation and upland use, and is a permitted use.

VI.

The proposed development is neither in an estuary nor does it threaten an estuary. It is consistent with the Natural systems Policies of the KCSMP at p. 5-2 and with the regulation relating to estuaries, WAC 173-16-050 (5).

V.

The proposed development is consistent with the preferences of the KCSMP and SMA for shorelines of state wide significance. The proposal recognizes state wide over local interest by contributing to the statewide and worldwide production of food. It largely preserves the natural character of the shoreline and would result in the long term benefit of food production with minimal environmental impact. Under these circumstances, aquaculture is a desired and preferred water-dependent use of this Puget Sound shoreline of state wide significance.

VI.

The proposed development meets the requirements of both the Shoreline Management Act and Kitsap County Shoreline Master Program provided that the following conditions are imposed:

1. That the shoreline substantial development permit shall expire five years from issuance. A new permit shall be required to continue operations.
2. That the maximum salmon production shall be 80,000 pounds per year.
3. That tarps suspended from the pens shall be used to collect sediment, and sediment will be pumped from the tarps to deep water.
4. That when fish are fed, only dry feed shall be used.
5. That antibiotics shall only be used to treat fish disease, and not to prevent the outbreak of disease.
6. That the development shall have coverage for \$10,000 minimum liability insurance and \$5,000 minimum performance bond (this requirement may be met through meeting the requirements of other government agencies).
7. That the fish slaughter waste shall be disposed of at on-shore processing facilities.
8. That no methods shall be used to control predators which has the potential to, or does in fact, injure them.
9. That a person residing near Yukon Harbor shall be designated by notice to Kitsap County as an agent of the permittee. That person shall furnish day and evening telephone numbers and shall be reliably available when called.

1           10.    That, for possible future use, the  
2                permittee shall monitor water quality and  
3                antibiotics under a method approved by the  
4                Washington State Department of Ecology.  
5                The monitoring results shall be presented  
6                to Kitsap County, the State Department of  
7                Ecology the State Department of Fisheries,  
8                and the State Department of Natural  
9                Resources.

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50  
51  
52  
53  
54  
55  
56  
57  
58  
59  
60  
61  
62  
63  
64  
65  
66  
67  
68  
69  
70  
71  
72  
73  
74  
75  
76  
77  
78  
79  
80  
81  
82  
83  
84  
85  
86  
87  
88  
89  
90  
91  
92  
93  
94  
95  
96  
97  
98  
99  
100  
101  
102  
103  
104  
105  
106  
107  
108  
109  
110  
111  
112  
113  
114  
115  
116  
117  
118  
119  
120  
121  
122  
123  
124  
125  
126  
127  
128  
129  
130  
131  
132  
133  
134  
135  
136  
137  
138  
139  
140  
141  
142  
143  
144  
145  
146  
147  
148  
149  
150  
151  
152  
153  
154  
155  
156  
157  
158  
159  
160  
161  
162  
163  
164  
165  
166  
167  
168  
169  
170  
171  
172  
173  
174  
175  
176  
177  
178  
179  
180  
181  
182  
183  
184  
185  
186  
187  
188  
189  
190  
191  
192  
193  
194  
195  
196  
197  
198  
199  
200  
201  
202  
203  
204  
205  
206  
207  
208  
209  
210  
211  
212  
213  
214  
215  
216  
217  
218  
219  
220  
221  
222  
223  
224  
225  
226  
227  
228  
229  
230  
231  
232  
233  
234  
235  
236  
237  
238  
239  
240  
241  
242  
243  
244  
245  
246  
247  
248  
249  
250  
251  
252  
253  
254  
255  
256  
257  
258  
259  
260  
261  
262  
263  
264  
265  
266  
267  
268  
269  
270  
271  
272  
273  
274  
275  
276  
277  
278  
279  
280  
281  
282  
283  
284  
285  
286  
287  
288  
289  
290  
291  
292  
293  
294  
295  
296  
297  
298  
299  
300  
301  
302  
303  
304  
305  
306  
307  
308  
309  
310  
311  
312  
313  
314  
315  
316  
317  
318  
319  
320  
321  
322  
323  
324  
325  
326  
327  
328  
329  
330  
331  
332  
333  
334  
335  
336  
337  
338  
339  
340  
341  
342  
343  
344  
345  
346  
347  
348  
349  
350  
351  
352  
353  
354  
355  
356  
357  
358  
359  
360  
361  
362  
363  
364  
365  
366  
367  
368  
369  
370  
371  
372  
373  
374  
375  
376  
377  
378  
379  
380  
381  
382  
383  
384  
385  
386  
387  
388  
389  
390  
391  
392  
393  
394  
395  
396  
397  
398  
399  
400  
401  
402  
403  
404  
405  
406  
407  
408  
409  
410  
411  
412  
413  
414  
415  
416  
417  
418  
419  
420  
421  
422  
423  
424  
425  
426  
427  
428  
429  
430  
431  
432  
433  
434  
435  
436  
437  
438  
439  
440  
441  
442  
443  
444  
445  
446  
447  
448  
449  
450  
451  
452  
453  
454  
455  
456  
457  
458  
459  
460  
461  
462  
463  
464  
465  
466  
467  
468  
469  
470  
471  
472  
473  
474  
475  
476  
477  
478  
479  
480  
481  
482  
483  
484  
485  
486  
487  
488  
489  
490  
491  
492  
493  
494  
495  
496  
497  
498  
499  
500  
501  
502  
503  
504  
505  
506  
507  
508  
509  
510  
511  
512  
513  
514  
515  
516  
517  
518  
519  
520  
521  
522  
523  
524  
525  
526  
527  
528  
529  
530  
531  
532  
533  
534  
535  
536  
537  
538  
539  
540  
541  
542  
543  
544  
545  
546  
547  
548  
549  
550  
551  
552  
553  
554  
555  
556  
557  
558  
559  
560  
561  
562  
563  
564  
565  
566  
567  
568  
569  
570  
571  
572  
573  
574  
575  
576  
577  
578  
579  
580  
581  
582  
583  
584  
585  
586  
587  
588  
589  
590  
591  
592  
593  
594  
595  
596  
597  
598  
599  
600  
601  
602  
603  
604  
605  
606  
607  
608  
609  
610  
611  
612  
613  
614  
615  
616  
617  
618  
619  
620  
621  
622  
623  
624  
625  
626  
627  
628  
629  
630  
631  
632  
633  
634  
635  
636  
637  
638  
639  
640  
641  
642  
643  
644  
645  
646  
647  
648  
649  
650  
651  
652  
653  
654  
655  
656  
657  
658  
659  
660  
661  
662  
663  
664  
665  
666  
667  
668  
669  
670  
671  
672  
673  
674  
675  
676  
677  
678  
679  
680  
681  
682  
683  
684  
685  
686  
687  
688  
689  
690  
691  
692  
693  
694  
695  
696  
697  
698  
699  
700  
701  
702  
703  
704  
705  
706  
707  
708  
709  
710  
711  
712  
713  
714  
715  
716  
717  
718  
719  
720  
721  
722  
723  
724  
725  
726  
727  
728  
729  
730  
731  
732  
733  
734  
735  
736  
737  
738  
739  
740  
741  
742  
743  
744  
745  
746  
747  
748  
749  
750  
751  
752  
753  
754  
755  
756  
757  
758  
759  
760  
761  
762  
763  
764  
765  
766  
767  
768  
769  
770  
771  
772  
773  
774  
775  
776  
777  
778  
779  
780  
781  
782  
783  
784  
785  
786  
787  
788  
789  
790  
791  
792  
793  
794  
795  
796  
797  
798  
799  
800  
801  
802  
803  
804  
805  
806  
807  
808  
809  
810  
811  
812  
813  
814  
815  
816  
817  
818  
819  
820  
821  
822  
823  
824  
825  
826  
827  
828  
829  
830  
831  
832  
833  
834  
835  
836  
837  
838  
839  
840  
841  
842  
843  
844  
845  
846  
847  
848  
849  
850  
851  
852  
853  
854  
855  
856  
857  
858  
859  
860  
861  
862  
863  
864  
865  
866  
867  
868  
869  
870  
871  
872  
873  
874  
875  
876  
877  
878  
879  
880  
881  
882  
883  
884  
885  
886  
887  
888  
889  
890  
891  
892  
893  
894  
895  
896  
897  
898  
899  
900  
901  
902  
903  
904  
905  
906  
907  
908  
909  
910  
911  
912  
913  
914  
915  
916  
917  
918  
919  
920  
921  
922  
923  
924  
925  
926  
927  
928  
929  
930  
931  
932  
933  
934  
935  
936  
937  
938  
939  
940  
941  
942  
943  
944  
945  
946  
947  
948  
949  
950  
951  
952  
953  
954  
955  
956  
957  
958  
959  
960  
961  
962  
963  
964  
965  
966  
967  
968  
969  
970  
971  
972  
973  
974  
975  
976  
977  
978  
979  
980  
981  
982  
983  
984  
985  
986  
987  
988  
989  
990  
991  
992  
993  
994  
995  
996  
997  
998  
999  
1000

VII.

1           Lastly, respondents have urged that appellant may not offer to  
2           accept additional conditions on his proposal during the hearings  
3           before us. The conditions enumerated at Conclusion of Law VI, above,  
4           were agreed by appellant in part. However, the greater consideration  
5           is that each condition is supported by the evidence before us, each is  
6           necessary to conform the proposal with the master program and Act, and  
7           all the conditions taken together do not expand the scope of the  
8           proposal. The case of Hayes v. Yount, 87 Wn. 2d 280, 291 (1976) cited  
9           by respondents is distinguishable in that the additional conditions  
10          sought there would have changed the essence of the proposal. This  
11          would often be the case where, as in Hayes, the proposal's essence is  
12          vague to begin with. See, e.g. Lassiter v. Kitsap County, et. al SHB  
13          No. 86-23 (1986). We are cognizant of the mischief which would result  
14          if vague proposals were not made definite until appeal before us, or  
15          if definite proposals were reformed beyond their original scope during  
16          appeal before us. None of that is this case. Rather, we are here

1 conditioning a definite proposal within the confines of its original  
2 scope. This is our long standing practice and one which has been  
3 useful in arriving at a final and correct resolution of controversy.  
4 Such a practice has been employed and affirmed on review in San Juan  
5 County v. Natural Resources, 28 Wn. App 796, 800 (1981) and Kitsap  
6 County v. State 107, Wn.2d 801 (1987). A shoreline permit for the  
7 proposal should issue with the conditions which we impose above.  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

VIII.

Any Finding of Fact which is deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions of Law the Board enters this

ORDER

The action of Kitsap County is reversed, and this matter is remanded to Kitsap County for issuance of a shoreline substantial development permit containing the conditions enumerated in Conclusion of Law VI hereof.

DONE at Lacey, Washington this 7<sup>th</sup> day of July, 1987.

SHORELINES HEARINGS BOARD

Lawrence J. Faulk 7/7/87  
LAWRENCE J. FAULK, Chairman

Wick Dufford  
WICK DUFFORD, Member

Judith A. Bendor  
JUDITH A. BENDOR, Member

Nancy Burnett  
NANCY BURNETT, Member

Les Eldridge  
LES ELDRIDGE, Member

Rodney M. Kerlake  
RODNEY M. KERSLAKE, Member

William A. Harrison  
WILLIAM A. HARRISON  
Administrative Appeals Judge

SHB No. 86-22  
FINAL FINDINGS OF FACT  
CONCLUSIONS OF LAW AND ORDER